IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15998 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTBHAI CHATURBHAI CHUNARA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS SUBHADRA G PATEL for the Petitioner
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/08/2005

ORAL JUDGMENT

This petition under Article 226 of the Constitution of India is directed against the order of detention dated 22.06.2005 passed by the Commissioner of Police, Baroda City – respondent No.2 herein in exercise of power conferred under Section 3 Sub-section (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, 'the PASA Act') detaining the petitioner as bootlegger. The challenge is on the ground that the order of detention is arbitrary, illegal unconstitutional and contrary to the settled provisions of law in asmuchas the alleged activities of the detenu do not result into affecting the public order.

In the order of detention dated 22.06.2005, respondent No.2 – the detaining authority has referred to five different instances, whereby offences under Sections 66(b) and 5(e) of the Bombay Prohibition Act have been registered at

Navapura Police Station, Baroda with five different Crime Register numbers. The impugned order of detention also refer to the aspect of inability on the part of the detaining authority to punish the detenu under the provisions of ordinary law. It states about anti-social and criminal activities of the detenu being prejudicial to the public health and public order.

Ms.Subhadra G.Patel, learned advocate for the petitioner has confined her arguments to the challenge of order of detention dated 22.06.2005 on the ground that it cannot be said that simple registration of offence under Bombay Prohibition Act, 1949 against the detenu can be said to be the activity prejudicial to the public order or public health. According to her, there is no mention about any other anticidents leading to disturbance of public order or even detenu indulging into any violent activity and even no

person has deposed against the detenu and no statements have been recorded by the concerned authority of any witness. She submitted that in such circumstances, the order of detention suffers from vice of not-application of mind of the detaining authority and there exist no cogent or credible material before the detaining authority before arriving at subjective satisfaction of prejudicial activities of the petitioner resulting into disturbing public order or public health. In support of her arguments, she has relied on the decision delivered in Letters Patent Appeal No.223 of 2000. The aforesaid decision has clearly laid down that the activities of the detenu must have potentiality to disturb even the tempo of public order and the detaining authority before arriving at a particular subjective satisfaction, must have applied its mind to the germane and relevant material. Therefore, she submitted that the order of detention being illegal, unconstitutional and

violative of Article 22 of the Constitution of India requires to be quashed and set aside.

Learned Assistant Government Pleader, on the basis of the affidavit in reply filed by the detaining authority made certain submissions and mainly contended that series of registration of crime against the detenu on five different occasions is sufficient enough to come to the conclusion for the detaining authority that the activities of the detenu is prejudicial to public order and, therefore, the order of detention is valid and legal.

Having heard learned counsels for the parties, I am in complete agreement with the ratio laid down by the Division Bench of this Court in Letters Patent Appeal No.223 of 2000, referring the earlier decision of the Apex Court in the case of **PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE, AHMEDABAD CITY AND ANOTHER**,

AIR 1989 SC 491. In the present case, except reference to the registration of various offences under the Bombay Prohibition Act, 1949 in five different Crime Registration numbers against the detenu at Navapura Police Station, Baroda and Southern Region Prohibition Station, no other credible or relevant material is relied on by the detaining authority and, therefore, the subjective satisfaction of the detaining authority is vitiated due to lack of such material. In absence of any other offence alleged to have been committed by the detenu which may result in to disturbance of the public order, viz. indulging into violence or disturbing the peace at public place, simple registration of various offences cannot be said to have potentiality of disturbing the public order or public health.

In the circumstances, the power exercised by the detaining authority under Sub-section 1 of

Section 3 of the PASA Act for passing the order of detention dated 22.06.2005 is held illegal and unconstitutional and detention order is therefore quashed and set aside. The detenu is to be set at liberty forthwith, if he is not required in any other case by any authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

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